

REMARKS

The Office Action dated November 10, 2009 has been received and carefully noted.

The following remarks are submitted as a full and complete response thereto.

The Office Action of November 10, 2009, presented a restriction requirement, requiring election between one of the following two inventions:

Invention I, recited in claims 1-9, 12-29, 31-46, and 64, drawn to a method, an apparatus, and a computer readable-medium for a response server in receiving response content and application specification content and playing a call response to another terminal upon a call or session request; and

Invention II, recited in claim 47, drawn to an apparatus with a transceiver and a processor to program an automatic call response server with an application to create a media message including response content and to store one of a status of the automatic call response service and history of the automatic call response service.

Applicants respectfully elect, with **traverse**, to prosecute the subject matter of Invention I, recited in claims 1-9, 12-29, 31-46 and 64. Thus, Applicants respectfully request timely consideration on the merits.

Also, Applicants respectfully request reconsideration of the restriction requirement. Applicants respectfully submit that the restriction requirement is improper because the inventions, as claimed, are not separately usable, and overlap in scope. As stated in the Office Action, Inventions I and II are related as subcombinations disclosed as usable together in a single combination. Two or more claimed subcombinations, disclosed as usable together

in a single combination, and which can be shown to be separately usable, are usually restrictable, when the subcombinations do not overlap in scope and are not obvious variants (*see* MPEP 806.05(d)). In addition, the restriction requirement must show, by way of example, that one of the subcombinations has utility other than in the disclosed combination (*see* MPEP 806.05(d)). Applicants respectfully submit that the above requirements are not met by the Office Action, and therefore, the restriction requirement is clearly improper.

Invention I may be summarized, for example, by independent claim 22, which is directed to an apparatus including a receiver configured to receive from a terminal a media message which includes response content and application specific content. The apparatus also includes a processor configured to store the response content, and to use the application specific content to program a call response of the apparatus. The apparatus is further configured to play and/or transmit the call response to another terminal, when a call or a session request of the another terminal directed to a user of the terminal is received by the apparatus.

Invention II may be summarized by independent claim 47, which is directed to an apparatus including a transceiver, and a processor configured to prepare a programming media message to program an automatic call response server, the programming media message including response content to be transmitted to an automatic call response server. The processor includes an application in the apparatus to create media messages, the

application configured to handle messaging with the call response server, and to store information on at least one of a status of the automatic call response service and a history of the automatic call response service.

Applicants respectfully submit that the above inventions are not separately usable, and overlap in scope, making the restriction requirement deficient under MPEP 806.05(d). Invention I is not separately usable from Invention II since, for example, the apparatus of Invention I receives a media message including response content and application specification content from the apparatus of Invention II, and the apparatus of Invention I then performs its remaining functions based on the media message. Invention II is not separately usable from Invention I because, for instance, the apparatus of Invention II prepares the media message including the response content and the application specification content to program and to be transmitted to the apparatus of Invention I. This is clearly supported in the specification, for example, at paragraphs 77-78.

The Office Action asserted that each of the inventions has a separate function and are, thus, restrictable (*see* Office Action at page 2, last paragraph). However, the MPEP also requires that subcombinations be separately usable to be restrictable (*see* MPEP 806.05(d)). Instead of applying this requirement, the Office Action seemed to apply another requirement for restriction, that one of the subcombinations has utility other than in the disclosed combination (*see* MPEP 806.05(d)). In other words, the Office Action appeared to fail to

apply all of the requirements for restriction under the MPEP.

Furthermore, the Office Action seemed to ignore the requirement that subcombinations must not overlap in scope to be restrictable (*see* MPEP 806.05(d)). Applying this requirement to the present application, it is clear that Invention I overlaps in scope with Invention II. For example, Invention I receives a media message including response content and application specification content from the apparatus of Invention II, which prepares the media message to program and to be transmitted to the apparatus of Invention I. In other words, the inventions overlap in scope with respect to, at least, the media message including the response content of the present invention. Thus, Inventions I and II are clearly not restrictable.

For at least these reasons, Applicants respectfully submit that the restriction requirement is clearly improper, and respectfully request that the restriction requirement be withdrawn.

Applicants reserve the right to file a divisional application on the non-elected claims at any point prior to the termination of the proceedings in the subject application.

In the event this paper is not being timely filed, the Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

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